E.S.I. Meats, Inc. *and* Local 280, United Food and Commercial Workers International Union, AFL-CIO *and* Marlin Eugene West. Cases 25-CA-15273, 25-CA-15319, and 25-CA-15592

27 June 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 29 April 1983, on charges filed by the Union, the Regional Director for Region 25 issued an order consolidating cases, complaint, and notice of hearing in Cases 25-CA-15273 and 25-CA-15319 alleging that the Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act.

On 13 June 1983 Marlin Eugene West filed the charge in Case 25-CA-15592 alleging that the Respondent had discharged him 26 May 1983 because of his union activities. On 29 June 1983, during the course of the investigation of the charge in Case 25-CA-15592, the Regional Director approved a settlement agreement executed by the parties in Cases 25-CA-15273 and 25-CA-15319. The Respondent began compliance with the terms of the settlement agreement 1 July 1983 by posting the required notice and sending the Regional Office a check for the amount of backpay to be given to alleged discriminatee Billy Martin.

On 5 July 1983 the Regional Director notified the parties that he was vacating his approval of the settlement agreement in Cases 25-CA-15273 and 25-CA-15319 because the settlement agreement might affect the rights of Charging Party West in Case 25-CA-15592 and because West was not advised of the proposed settlement agreement or given an opportunity to object to it.

On 27 July 1983 the Regional Director issued a complaint and notice of hearing in Case 25-CA-15592 alleging violations of Section 8(a)(1) and (3), including the unlawful discharge of West. The Respondent filed a Motion for Summary Judgment in Case 25-CA-15592 16 August 1983. On 8 September 1983 the Regional Director issued a consolidated complaint and notice of hearing in Cases 25-CA-15273 and 25-CA-15319 and ordered those cases to be consolidated with Case 25-CA-15592.

On 3 October 1983 the Respondent filed a Motion for Summary Judgment, a Motion to Dismiss, and a memorandum in support of each motion. On 17 November 1983 the General Counsel filed a response in opposition to the Respondent's Motion for Summary Judgment, requesting that the Board deny the motion. On 7 December 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Respondent's motions should not be granted. The General Counsel filed a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment and to Dismiss

The Respondent asserts that under well-settled Board law its compliance with the settlement agreement in Cases 25-CA-15273 and 25-CA-15319 bars the complaint in Case 25-CA-15592 because the conduct alleged in that complaint predates the settlement agreement and was readily discoverable by the Regional Director. Accordingly, the Respondent contends that there are no issues of fact or law requiring a hearing and that it is entitled to judgment as a matter of law.

The General Counsel contends that the Regional Director never intended that the settlement agreement would dispose of the charge in Case 25-CA-15592 inasmuch as he was not personally aware of its pendency until after he had approved the settlement. Further, the General Counsel argues that the Motion for Summary Judgment should be denied because the Regional Director vacated the settlement agreement prior to any significant compliance by the Respondent. In this regard, the General Counsel points out that, although the Respondent had mailed the Region a check for the backpay amount called for by the settlement, this check never was surrendered to Charging Party Martin and no payment was ever made on the check.

We agree with the Respondent and shall grant its Motion for Summary Judgment. The Board consistently has held that a settlement agreement disposes of all issues involving presettlement conduct of a charged party unless prior violations of the Act were either unknown to the General Counsel and not readily discoverable by investigation, or specifically reserved from the settlement agreement by the mutual understanding of the parties.[1] Here, the presettlement discharge of Marlin Eugene West not only was readily discoverable by investigation, it in fact was the subject of the charge in Case 25-CA-15592 filed more than 2 weeks before the Regional Director's approval of the settlement agreement. We attach no significance to the alleged fact

[1] See, e.g., *Cambridge Taxi Co.*, 260 NLRB 931 (1982); *Laminite Plastics Mfg. Corp.*, 238 NLRB 1234 (1978); *Hollywood Roosevelt Hotel*, 235 NLRB 1397 (1978); *Steves Sash & Door Co.*, 164 NLRB 468, 473 (1967).

that the Regional Director was not personally aware of the charge in Case 25-CA-15592 when he approved the settlement 29 June 1983. The Regional Director signed a letter dated 13 June 1983 which informed the Respondent that a charge had been filed against it in Case 25-CA-15592 and which requested the Respondent's participation in the investigation of the charge. In addition, a field examiner—acting as the Regional Director's agent—had begun an investigation of that charge prior to approval of the settlement. Because there is no basis for finding that the charge in Case 25-CA-15592 was unknown to the Regional Director at the time of the settlement agreement, he acted improperly in vacating his approval of the settlement on the ground that he had learned of the pendency of Case 25-CA-15592 only after such approval. Further, there is no evidence that the Respondent has failed to fulfill its obligations under the settlement agreement.

That the charges in issue were filed by different charging parties—United Food & Commercial Workers Local 280 in Cases 25-CA-15273 and 25-CA-15319 and Marlin Eugene West in Case 25-CA-15592—is insufficient to change the rules barring litigation of discoverable presettlement conduct. If, after settlement of one charge, a related charge regarding presettlement conduct is filed, litigation of the new charge is barred whether the same or a different party filed the new charge.[2] The issue is not whether the new charge was filed by a different charging party, but whether the matters raised by the new charge were readily discoverable through investigation. The issue here is the same, and Charging Party West stands in the same position as a postsettlement charging party.

The Board's previous decisions also hold that proof that a charge has been specifically reserved from a settlement agreement must be established by affirmative evidence. The General Counsel has presented no evidence that the charge in Case 25-CA-15592 was specifically reserved for future resolution.[3] Accordingly, we find that the settlement agreement approved by the Regional Director 29 June 1983 encompassed the charge in Case 25-CA-15592 and that the Regional Director erred in attempting to vacate his approval of the settlement. We therefore grant the Respondent's Motion for Summary Judgment and Motion to Dismiss.

ORDER

The complaint is dismissed.

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[2] See, e.g., *Laminite Plastics Mfg. Corp.*, above, involving a postsettlement charge by the same charging party, and *Hatfield Trucking Service*, 270 NLRB 136 (1984), involving a postsettlement charge by a different charging party. See also *Cambridge Taxi Co.*, above, involving a presettlement charge by the same charging party.

[3] The General Counsel asks us to infer from the fact that the charge was not listed in the settlement agreement that it was specifically reserved for future resolution. The Board consistently has rejected the notion that an act of omission may constitute specific reservation. *Cambridge Taxi Co.*, 260 NLRB 931; *Hollywood Roosevelt Hotel*, 235 NLRB 1397.